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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,007	06/25/2001	Mitchell V. Bruce	1676A1	9402
23342	7590	01/06/2004	EXAMINER	
KILPATRICK STOCKTON LLP 1001 WEST FOURTH STREET WINSTON-SALEM, NC 27101			KOCH, GEORGE R	
			ART UNIT	PAPER NUMBER
			1734	

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/891,007

Applicant(s)

BRUCE ET AL.

Examiner

George R. Koch III

Art Unit

1734

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 27-32 and 42.Claim(s) objected to: 5,11,12 and 46.Claim(s) rejected: 1-4,6-8,10,13-17,41,43-45 and 47-50.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

J.A. LORENZO
PRIMARY EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): 5, 11-12, 27-32, 42 and 46. Claims 5, 11-12, and 46 are objected as dependent claims of rejected independent claims, but would be allowable if rewritten in independent form with all of the limitations of the parent claims. With respect to claims 5, and 11-12, applicants arguments on pages 20 (filed 11/26/2003) point out that the prior art of record that the detector is operable to generate a signal to the flow controller to control the flow of solution to the first reservoir. With respect to claim 46, it is noted that the detector of Switall is not operable to generate a signal to the flow controller to control the flow of the solution to the first volume of solution. Furthermore, Claims 27-32 and 42 are allowed. The prior art of record does not, as noted in applicants remarks (filed 11/26/2003) on page 22, the prior art of record does not disclose that the detector is operable to generate a signal to the flow controller in response to the monitored solution level of the auxiliary reservoir.

Continuation of 5. does NOT place the application in condition for allowance with respect to claims 1-4, 6-8, 10, 13-17, 41, 43-45, 47-50 because: The previously presented grounds of rejection are maintained. With respect to the arguments presented on page 14, applicant has argued that Switall does not disclose that the second reservoir's fluid level is "indicative" of the fluid level in the first reservoir. However, "indicative" is interpreted to be a broad term that merely requires some relationship, and the reservoirs of Switall clearly have a relationship between their levels and thus the level second reservoir is "indicative" of the level in the first reservoir. Based on applicants remarks, it appears that applicant is arguing limitations that are not present in the language of the claims - for example - concepts as to "separate zone" which is nowhere in the claims but is present in the arguments on page 14.

For example, in page 15, applicant argues instances where the tray 24 of Switall is steady while mixing tank 22 decreases. However, this is not considered to be excluded by the current language, since there are situations when changes in the second reservoir affect the first reservoir (see columns 3-5, Switall). Furthermore, since the detector operates to changes levels of solution in the second reservoirs which is capable of making changes in the first reservoir.

Since the other arguments are based on this line of reasoning, those rejections are maintained.